

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #5	CCRB Case #: 201709310	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/08/2017 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 110	18 Mo. SOL 4/8/2019	EO SOL 4/8/2019	
Date/Time CV Reported Wed, 11/08/2017 4:13 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 11/08/2017 4:13 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Steven Betts	01565	938062	110 PCT
2. POM Paul Illowsky	06402	935042	110 PCT
3. POM Wayne Yu	08593	939728	110 PCT
4. POM Christophe Bourgade	08738	962953	110 PCT
5. POM James Perkins	21632	959890	110 PCT
6. POM Oliver Kim	22104	954022	110 PCT
7. POM Nicholas Gismondi	11997	960592	110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Gasiorrek	03349	934909	110 PCT
2. POM Todd Shea	01859	951241	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Wayne Yu	Abuse: Police Officer Wayne Yu entered § 87(2)(b) in Queens.	§ 87(2)(b)
B.POM Paul Illowsky	Abuse: Police Officer Paul Illowsky entered § 87(2)(b) in Queens.	§ 87(2)(b)
C.POM Christophe Bourgade	Abuse: Police Officer Christopher Bourgade entered § 87(2)(b) in Queens.	§ 87(2)(b)
D.POM Nicholas Gismondi	Abuse: Police Officer Nicholas Gismondi entered § 87(2)(b) in Queens.	§ 87(2)(b)
E.POM Oliver Kim	Abuse: Police Officer Oliver Kim entered § 87(2)(b) in Queens.	§ 87(2)(b)
F.POM James Perkins	Abuse: Police Officer James Perkins entered § 87(2)(b) in Queens.	§ 87(2)(b)
G.POM Wayne Yu	Abuse: Police Officer Wayne Yu searched § 87(2)(b) in Queens.	§ 87(2)(b)
H.POM Paul Illowsky	Abuse: Police Officer Paul Illowsky searched § 87(2)(b) in Queens.	§ 87(2)(b)
I.POM Christophe Bourgade	Abuse: Police Officer Christopher Bourgade searched § 87(2)(b) in Queens.	§ 87(2)(b)
J.POM Nicholas Gismondi	Abuse: Police Officer Nicholas Gismondi searched § 87(2)(b) in Queens.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
K.POM Oliver Kim	Abuse: Police Officer Oliver Kim searched § 87(2)(b) in Queens.	
L.POM James Perkins	Abuse: Police Officer James Perkins searched § 87(2)(b) in Queens.	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed a complaint with the CCRB via the website on November 8, 2017.

On October 8, 2017, at approximately 8:00 p.m., Police Officer Wayne Yu, Police Officer Paul Illowsky, Police Officer Christopher Bourgade, Police Officer Nicholas Gismondi, Police Officer Oliver Kim, and Police Officer James Perkins, all of the 110th Precinct, entered and searched § 87(2)(b)'s house, located at § 87(2)(b) in Queens, after receiving a call that a man had a gun inside (**Allegations A through L: Abuse of Authority**, § 87(2)(g)). The officers were working under the supervision of Sergeant Steven Betts of the 110th Precinct, who was on scene but did not enter the house. § 87(2)(b) lives in a private house but each bedroom is rented out separately; only § 87(2)(b) and his neighbor, § 87(2)(b) were in the house at the time of the entry.

§ 87(2)(g), § 87(4-b)

There is no video evidence in this case.

Findings and Recommendations

Allegation A: Abuse of Authority: Police Officer Wayne Yu entered § 87(2)(b) in Queens.

Allegation B: Abuse of Authority: Police Officer Paul Illowsky entered § 87(2)(b) in Queens.

Allegation C: Abuse of Authority: Police Officer Christopher Bourgade entered § 87(2)(b) in Queens.

Allegation D: Abuse of Authority: Police Officer Nicholas Gismondi entered § 87(2)(b) in Queens.

Allegation E: Abuse of Authority: Police Officer Oliver Kim entered § 87(2)(b) in Queens.

Allegation F: Abuse of Authority: Police Officer James Perkins entered § 87(2)(b) in Queens.

Allegation G: Abuse of Authority: Police Officer Wayne Yu searched § 87(2)(b) in Queens.

Allegation H: Abuse of Authority: Police Officer Paul Illowsky searched § 87(2)(b) in Queens.

Allegation I: Abuse of Authority: Police Officer Christopher Bourgade searched § 87(2)(b) in Queens.

Allegation J: Abuse of Authority: Police Officer Nicholas Gismondi searched § 87(2)(b) in Queens.

Allegation K: Abuse of Authority: Police Officer Oliver Kim searched § 87(2)(b) in Queens.

Allegation L: Abuse of Authority: Police Officer James Perkins searched § 87(2)(b) in Queens.

§ 87(2)(g)

It is undisputed that officers entered and searched § 87(2)(b) in Queens to investigate a 911 call about a man with a gun inside the house.

§ 87(2)(b) testified that about eight officers knocked on his bedroom door and woke him up, but he was not sure how they got into the house and was sure that the front door was locked (BR 01 and BR 14). The officers asked if he was alone, then one officer shined his

flashlight into § 87(2)(b)'s bedroom and confirmed that no one else was there. The officers said that they were leaving and § 87(2)(b) followed them downstairs and locked the front door behind them.

§ 87(2)(b) stated that she was in her bedroom when she heard someone knocking on § 87(2)(b)'s bedroom door (BR 02). She went to see what was happening and saw about eight officers in the hallway. § 87(2)(b) did not know how the officers got inside because she was in her bedroom watching television and § 87(2)(b) was in his bedroom sleeping.

Sgt. Betts testified that he and his operator, PO Shea, responded to a call about a gun at § 87(2)(b) (BR 07). When they arrived, PO Illowsky, PO Yu, and PO Bourgade were already on scene and at least one was knocking on the front door of the house. The officers did not tell Sgt. Betts that they had seen or heard anything suspicious at the location, and he did not give the officers any orders or tell them to enter the house. Sgt. Betts did not observe anything that made him suspicious at that point. Sgt. Betts and PO Shea walked down the driveway on the right side of the house but still did not hear anything from the house or see anything suspicious. They walked back to the front of the house about 30 seconds later and saw that some officers had entered the front door. He was not sure how the officers got inside or which officers entered. Sgt. Betts and PO Shea stayed outside the house near the beginning of the driveway. When the officers came out of the house a few minutes later, they told Sgt. Betts that they spoke to a resident and there was no need for the police, but they did not say how they gained entry into the house or which of them made the decision to enter, and Sgt. Betts did not ask if anyone opened the door for them. Sgt. Betts testified that the officers could have entered the location without consent because of the information provided in the 911 call; there were no other factors that contributed to the officers being able to enter without consent. The officers left the scene after about 15 minutes and closed the job as unfounded.

PO Shea § 87(2)(g) thought the officers needed consent to enter unless they heard or saw something suspicious that he was not aware of (BR 10).

PO Yu (BR 05), PO Illowsky (BR 06), PO Bourgade (BR 13), PO Gismondi (BR 08), PO Kim (BR 15), and PO Perkins (BR 09) each testified that they entered and searched the house after other officers they could not recall entered first, and that they did not or could not recall seeing or hearing anything that raised their suspicion in or around the house before entering. PO Yu, PO Illowsky, PO Bourgade, PO Gismondi, and PO Kim testified that they did not need consent to enter based solely on the contents of the 911 call, while PO Perkins stated that the officers needed consent to enter.

PO Gasiorek testified that he did not enter or search the house, nor did he see or hear anything in or around the house that raised his suspicion (BR 11). He thought that the officers needed consent to enter.

PO Gismondi and PO Kim testified that they tried the 911 callback number before going to the location and found that it went to a pay phone down the street from § 87(2)(b)'s house. The officers went to the pay phone first, but no one was around and the officers did not see anything suspicious. PO Gismondi noted that it was strange that the call came from a payphone and that this contributed to the job being marked unfounded, but stated that it did not initially make him doubt the validity of the call because legitimate calls sometimes come from payphones.

An anonymous male called 911 and reported that he had just passed § 87(2)(b) and saw a woman screaming for help out of a second floor window (recording in BR 03,

transcription in BR 04). A Chinese man pulled her back into the room and the caller thought that the Chinese man had a gun.

In order for a warrantless entry to be justified under the emergency doctrine, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. Additionally, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *People v. Mitchell*, 39 N.Y.2d 173, 177-178 (1976) (BR 12). (*Mitchell* also provided a third requirement, that the search must not be primarily motivated by intent to arrest and seize evidence, but this requirement has been questioned by *Brigham City v. Stuart*, 547 U.S. 398 (2006)).

Without officers making confirmatory observations, an anonymous 911 call cannot provide more than reasonable suspicion that a crime is occurring or has been committed. *People v. Argyris*, 24 N.Y.3d 1138, 1140 (2014) (BR 16).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) or § 87(2)(b)
- Sgt. Betts has been a member of the service for 12 years and has had nine other CCRB allegations pled against him in four cases, none of which were substantiated § 87(2)(g)
- PO Yu has been a member of service for 12 years and has had two other CCRB allegations pled against him in two cases, neither of which was substantiated § 87(2)(g)
- PO Illowsky has been a member of service for 13 years and has had eight other CCRB allegations pled against him in four cases, none of which were substantiated § 87(2)(g)
- PO Bourgade has been a member of service for one year and has not had any other CCRB allegations pled against him.
- PO Gismondi has been a member of service for two years and has not had any other CCRB allegations pled against him.
- PO Kim has been a member of service for five years and has not had any other CCRB allegations pled against him.
- PO Perkins has been a member of service for two years and has not had any other CCRB allegations pled against him.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because § 87(2)(b) stated that he was considering filing a lawsuit regarding the incident.
- As of February 22, 2018, no notice of claim has been filed with the comptroller's office in regard to this incident (BR 17).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date